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Law and Order Code of the Fort McDowell Yavapai Community, Arizona

Adopted by Resolution No. 90-30, July 9, 1990 and subsequently amended. [Includes amendments dated 2000.]

CHAPTER 7 - EXTRADITION

Sec. 7-1. DEFINITIONS.

Chief Executive officer includes the governor, president, chairman, business manager or chief administrative official who has been lawfully designated by an Indian tribal government to act in such executive capacity.

Executive Authority includes any person who is the chief executive officer of a state or Indian tribe or such law enforcement, correction or probation officials or agencies of a state or Indian tribe who are by such state or Indian tribe authorized to perform the functions of demanding extradition from other jurisdiction.

Indian Tribal Government means any existing American Indian tribe recognized as a self-governing unit for the purpose of any federal governmental agency and which has a duly organized tribal court, court of Indian offenses, or traditional court.

President means the chief executive officer of the Fort McDowell Yavapai Indian Community.

Prosecuting Officer includes any person duly designated by legal authority to attend to the prosecution of criminal offenses on behalf of the government, including attorneys general, prosecutors, special prosecutors, district attorneys or special appointees.

State includes any state or territory, organized or unorganized, of the United States of America, including the District of Columbia.

Tribe is used in this chapter synonymously with "Indian tribal government," the Code of Indian Offenses or the custom and tradition of that tribe.

Sec. 7-2. FUGITIVES FROM JUSTICE; DUTY OF CHIEF EXECUTIVE.

Subject to the provisions of this chapter, the provisions of the Constitution of the United States controlling, and any and all acts of Congress enacted in pursuance thereof; it is the duty of the president of the Fort McDowell Yavapai Indian Community to have arrested and

delivered to the executive authority of any state or other Indian tribe any person charged in that jurisdiction with a felony, who has fled from justice and is found in this tribal jurisdiction.

Sec. 7-3. APPLICABILITY OF CHAPTER.

This chapter shall be applicable only in cases in which it is claimed that a felony has been committed. For purposes of this chapter, any act made a crime by the laws of any Indian tribe is a felony.

Sec. 7-4. FORM OF DEMAND.

No demand for the extradition of a person charged with crime or crimes in a state or another tribal jurisdiction shall be recognized by the president unless the demand is in writing alleging, except in cases arising under section 7-6, that the accused was present in the demanding jurisdiction at the time of the commission of the alleged crime, and that thereafter he fled from that jurisdiction. Said demand must be accompanied by a copy of an affidavit made before a tribal court judge or magistrate there, together with a copy of any warrant which was issued thereupon; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof together with a statement by the executive authority of the demanding state or tribe that the person sought has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information or affidavit made before the tribal court judge or magistrate must substantially charge that the person has committed a crime under the law of that state or tribe; and the copy of indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the executive authority making the demand.

Sec. 7-5. PRESIDENT MAY INVESTIGATE CASE.

When a demand shall be made upon the president of the Fort McDowell Yavapai Indian Community by the executive authority of a state or another Indian tribe for the surrender of a person so charged with crime, the president may call upon any prosecuting officer to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person sought and whether he should be surrendered.

Sec. 7-6. EXTRADITION OF PERSONS IMPRISONED OR AWAITING TRIAL IN A STATE OR ANOTHER TRIBE OR WHO HAVE LEFT THE DEMANDING JURISDICTION UNDER COMPULSION.

- a. When it is desired to have returned to this community a person who is charged in this jurisdiction with a crime, and that person is imprisoned or is held under criminal proceedings then pending against him in a state or other tribe, the president of the Fort McDowell Yavapai Indian Community may agree with the executive authority of such state or tribe for the extradition of that person before the conclusion of those proceedings or his term of sentence in the other state or tribe, upon the condition that the person be returned to the other state or tribe at the expense of this community as soon as the prosecution is terminated in this jurisdiction.

- b. The president may also surrender, on the demand of the executive secretary of any state or other tribe, any person in this jurisdiction who is charged in the manner provided in section 7-23 with having violated the laws of the state or tribe whose executive authority is making the demand, even though such person left the demanding jurisdiction involuntarily.

Sec. 7-7. EXTRADITION OF PERSONS NOT PRESENT IN DEMANDING JURISDICTION AT TIME OF COMMISSION OF CRIME.

The president may also surrender, on demand of the executive authority of any state or other tribe, any person in this jurisdiction who is charged in such other state or tribe in the manner provided in section 7-3 with committing an act in this jurisdiction or in another state or another tribe, which intentionally resulted in a crime occurring in the jurisdiction whose executive authority is making the demand. The provisions of this chapter not otherwise inconsistent shall apply to such cases, even though the accused was not in that jurisdiction at the time of the commission of the crime, and has not fled therefrom.

Sec. 7-8. ISSUE OF PRESIDENT'S WARRANT OF ARREST; RECITALS OF FACT.

If the president decides that the demand should be complied with, he shall sign a warrant of arrest which shall be directed to any peace officer or other person whom he may deem fit to entrust with the execution thereof. The warrant must substantially set forth the facts necessary to the validity of its issuance.

Sec. 7-9. MANNER AND PLACE OF EXECUTION OF WARRANT.

Such warrant shall authorize the peace officer or other person to whom directed, to arrest the accused at any time and any place where he may be found within the tribal jurisdiction, and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provision of this chapter to the duly authorized agent of the demanding state or tribe.

Sec. 7-10. AUTHORITY OF ARRESTING OFFICER.

Every such officer or other person empowered to make the arrest shall have the same authority in arresting the accused to command assistance therein, as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance.

Sec. 7-11. RIGHTS OF ACCUSED PERSON; APPLICATION FOR WRIT OF HABEAS CORPUS.

No person arrested upon such warrant shall be delivered over to a duly designated agent of the demanding executive authority unless he shall first be taken forthwith before a community court judge in this jurisdiction, who shall inform him of the demand made for his surrender. He must also be advised of the crime of which he is charged, and his right to demand and procure legal counsel. If the prisoner or his counsel desire to test the legality of his arrest, the judge of such court shall fix a reasonable time for him to apply for a writ of

habeas corpus. When such writ is applied for, notice thereof, and of time and place of hearing thereon shall be given to the prosecuting officer and to the said agent of the demanding state or tribe. At the hearing the judge may inquire into whether the accused can receive a fair trial in the demanding jurisdiction. If the judge determines that the accused probably cannot receive a fair trial in the demanding jurisdiction, then he shall release the accused from custody forthwith or hold a hearing early to determine if a fair trial can be had.

Sec. 7-12. PENALTY FOR NONCOMPLIANCE WITH PRECEDING SECTION.

Any officer who shall wrongfully deliver to the agent of the demanding state or tribe a person in his custody in willful disobedience of this chapter shall be guilty of an offense and, upon conviction, shall be fined not more than five hundred dollars (\$500.00) or be imprisoned not more than six (6) months, or both.

Sec. 7-13. CONFINEMENT IN JAIL WHEN NECESSARY.

- a. The officer executing the president's warrant of arrest or the agent of the demanding jurisdiction to whom the prisoner may have been delivered may, when necessary, confine the prisoner in the community jail or any other existing facility for detention of community prisoners; and the keeper of such jail must receive and safely keep the prisoner until the officer having charge of him proceeds on his route, such officer or agent being chargeable with the expense of keeping.
- b. The officer or agent of a demanding jurisdiction to whom a prisoner may have been delivered, following extradition proceedings in another state or another Indian tribe, or who may have jurisdiction over a prisoner, and who is merely passing through this jurisdiction with the prisoner for the purpose of immediately returning him to the demanding jurisdiction, may, when necessary, confine the prisoner in the community jail or other detention facility. The keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him proceeds on his route. The officer or agent is responsible for the expense of keeping his prisoner; however, such officer or agent shall produce and show to the keeper of the jail satisfactory written evidence of the fact that he is actually transporting the prisoner to the demanding jurisdiction with legal authority. Such prisoner shall not be entitled to demand a new requisition while in this community jurisdiction.

Sec. 7-14. ARREST PRIOR TO REQUISITION.

Whenever any person within this community is charged by the oath of a credible person given before a judge of this community, with having committed a crime in any state or in another tribe and, except in cases arising under section 7-6, with having fled from justice, or with having been convicted of a crime in that jurisdiction and having escaped from confinement, or having broken the terms of his bail, probation or parole; or whenever a complaint is made before a community judge in this tribe on the affidavit of a credible person in another jurisdiction stating that a crime has been committed in that jurisdiction and that the accused has been charged with having committed that crime and, except in cases arising under section 7-6, has fled from justice, or that the accused has been convicted of a crime and has escaped from confinement, or that the accused has broken the

terms of his bail, probation or parole, and is believed to be in this jurisdiction; such community court judge shall issue a warrant directed to any peace officer commanding him to apprehend the named person in this jurisdiction and to bring him before the community court to answer the foregoing charges. A certified copy of the sworn charge of complaint and affidavit shall be attached to the warrant.

Sec. 7-15. ARREST WITHOUT A WARRANT.

The arrest of a person may be lawfully made by any peace officer without a warrant, upon reasonable information that the accused stands charged in the courts of a state or other tribe with a crime punishable by death or imprisonment for a term exceeding one year. When arrested, the accused must be taken before a community judge with all practicable speed and a complaint must be made against him under oath setting forth the grounds for the arrest as if he had been arrested as in the preceding section; and thereafter his answer shall be heard as if he had been arrested on warrant.

Sec. 7-16. COMMITMENT TO AWAIT REQUISITION; BAIL.

If from the examination before the community judge it appears that the person held is the same person who is charged with having committed the alleged crime and, except in cases arising under section 7-6, that he has fled from justice, the judge must, by a warrant reciting the accusation, commit him to the community jail for a period of time not to exceed thirty (30) days in order to enable the arrest of the accused to be made by the proper requisition procedures of the state or tribe having jurisdiction of the offense, subject to bail as provided in the next section, or until his legal discharge.

Sec. 7-17. BAIL; IN WHAT CASES; CONDITIONS OF BOND.

Unless the offense with which the prisoner is charged is punishable by death or life imprisonment under the laws of the state or tribe in which it was committed, a community court judge in this community may grant the person arrested bail, in such sum as he deems proper, conditioned for the prisoner's appearance at a time specified in such bond, and for his surrender, for arrest upon the warrant of the president of this community.

Sec. 7-18. EXTENSION OF TIME OF COMMITMENT; ADJOURNMENT.

If the accused has not been arrested under a warrant of the president by the expiration date as specified by the community judge in accordance with section 7-15, such judge may discharge the prisoner, recommit him for a period not to exceed sixty (60) days, or grant bail for this recommitment period as provided in section 7-16.

Sec. 7-19. FORFEITURE OF BAIL.

If the prisoner is admitted to bail, and fails to appear and surrender himself according to the conditions of his bond, the tribal judge by proper order shall declare the bond forfeited and order his immediate arrest without warrant if he is within the community's jurisdiction. Recovery may be had on such bond in the name of the community as in the case of other bonds given by the accused in criminal proceedings.

Sec. 7-20. PERSONS UNDER CRIMINAL PROSECUTION IN THIS COMMUNITY AT TIME OF REQUISITION.

If a criminal prosecution has been instituted against such person under the laws of this community and is still pending, the chief executive officer, at his discretion, may either surrender him on demand of the executive authority of a state or other Indian tribe, or hold him until he has been tried and discharged or convicted and punished by this community.

Sec. 7-21. GUILT OR INNOCENCE OF ACCUSED; WHEN INQUIRED INTO.

Neither the president nor the community court may inquire into the guilt or innocence of the accused, in any proceeding after the demand for extradition, except to identify the accused as the person who is charged with the crime and to ascertain if reasonable cause exists for such extradition.

Sec. 7-22. PRESIDENT MAY RECALL WARRANT OR ISSUE ALIAS.

The president may recall his warrant of arrest or may issue another warrant whenever he deems proper.

Sec. 7-23. FUGITIVES FROM THIS COMMUNITY; DUTY OF PRESIDENT.

Whenever the president of this community shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation or parole in this community, from the executive authority of any state or other tribe, or from the chief justice or as associate justice of the supreme court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant to some agent, commanding him to receive the person so charged if delivered to him and convey him to the proper officer of this tribe.

Sec. 7-24. APPLICATION FOR ISSUANCE OF REQUISITION; BY WHOM MADE; CONTENTS.

- a. When a return to this community of a person charged with crime in this jurisdiction is required, the prosecuting officer shall present to the president his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place and circumstances of its commission, the jurisdiction in which he is believed to be, including the location of the accused therein at the time the application is made, and certifying that, in the opinion of the said prosecuting officer, the ends of justice require the arrest and return of the accused to this tribe for trial and that the proceeding is not instituted to enforce a private claim.
- b. When the return to this community is required of a person who has been convicted of a crime in this community and has escaped from confinement or broken the terms of his bail, probation or parole, the prosecuting officer shall present to the governor a

written application for a requisition for the return of such person, setting forth the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole, the jurisdiction in which he is believed to be, including the location of the person therein at the time application is made.

- c. The application shall be verified by affidavit, executed in duplicate and accompanied by two (2) certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the community court judge, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer may also attach such further affidavits and documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application, with the action of the president endorsement thereon, and one of the certified copies of the indictment, complaint, information and affidavits, or of the judgment of conviction or of the sentence shall be filed in the office of the community secretary, to remain on record in that office. The other copies of all papers shall be forwarded with the president's requisition.

Sec. 7-25. COSTS AND EXPENSES.

In all cases where the punishment of the crime includes confinement, the expenses shall be paid out of the community's treasury on the certification of the president. The expenses shall be the fees paid to the officers of the tribe or state on whose executive authority the requisition is made, and not exceeding the mileage fee then in effect by council policy for all necessary travel in returning such prisoner.

Sec. 7-26. IMMUNITY FROM SERVICE OF PROCESS IN CERTAIN CIVIL ACTIONS.

A person returned to this community by or after waiver of extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceedings for which he has been returned, until he has been convicted in the criminal proceedings, or, if acquitted, until he has had reasonable opportunity to return to the state or tribe from which he was extradited.

Sec. 7-27. WRITTEN WAIVER OF EXTRADITION PROCEEDINGS.

- a. Any person arrested in this community who is charged with having committed any crime in a state or other tribe or alleged to have escaped from confinement, or broken the terms of his bail, probation, or parole may waive the issuance and service of the warrant provided for in sections 7-7 and 7-8 and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a community court judge within this community a writing which states that he consents to return to the demanding jurisdiction; however, before such waiver shall be executed or subscribed by such person, it shall be the duty of such judge to inform such person of all his rights including the right to the issuance or service of a warrant of extradition and his right to obtain a writ of habeas corpus as provided in section 710.

- b. If and when such consent has been duly executed it shall forthwith be forwarded to the office of the president of this community and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state or tribe and shall deliver or cause to be delivered to such agent or agents a copy of such consent; however, nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding jurisdiction, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights, or duties of the officers of the demanding jurisdiction or of this community.

Sec. 7-28. NONWAIVER BY THE FORT McDOWELL YAVAPAI INDIAN COMMUNITY.

Nothing in this chapter shall be deemed to constitute a waiver by the Fort McDowell Yavapai Indian Community of its sovereignty or rights, powers or privileges to try such demanded person for crime committed within this jurisdiction, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence or punishment for any crime committed within this jurisdiction. Nor shall any proceedings had under this chapter which result in, or fail to result in, extradition be deemed a waiver by this tribe of any of its sovereignty or rights, privileges or jurisdiction in any way whatsoever.

Sec. 7-29. NO RIGHT OF ASYLUM; NO IMMUNITY FOR OTHER CRIMINAL PROSECUTIONS WHILE IN THIS JURISDICTION.

After a person has been brought back to this community by or after waiver of extradition proceedings, he may be tried in this jurisdiction for other crimes which he may be charged with having committed here as well as those specified in the requisition for his extradition.

Sec. 7-30. SEVERABILITY.

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

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